* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 247 of 2006**

% Date of Decision: April 26, 2007

COMMISSIONER OF INCOME TAX
DELHI-IV, NEW DELHI. ..... Appellant
Through Mrs. P.L. Bansal

versus

M/S DENSO INDIA LTD.
CAPITAL ROAD, LEFT WING
OL OF PALME MARG
MUNIRKA, NEW DELHI. ..... Respondent
Through Mr.M.S. Syali, Sr.Advocate with
Ms.Mahua C. Kalra and
Mr.Saubhagya Aggarwal

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J. (ORAL)

Admit.

2. The following substantial question of law arises for consideration: -

> "Whether the Assessing Officer could have imposed a liability on the Assessee without giving any reasons?"

3. The filing of paper books is dispensed with.

4. We have heard learned counsel for the parties and we find from the assessment order dated 26th February, 2002 that the Assessing Officer had included by way of deemed profit under Section 115JA of the Income Tax Act, 1961 a provision for gratuity and a provision for leave encashment. While doing so, the Assessing Officer gave absolutely no reason.

5. Feeling aggrieved by the addition, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Ordinarily, the appellate authority ought to have called for a remand report but, instead of doing so the appellate authority took into consideration the actuarial valuation submitted by the Assessee and on the merits of the case came to the conclusion that the provision towards gratuity and leave encashment and was an ascertained liability and, therefore,

could not be added back as was done by the Assessing Officer.

6. In further appeal before the Tribunal, a prayer was made by the Revenue for remanding the matter to the Assessing Officer for a decision on merits but we find that no consideration was given to this request and on the merits of the case the Tribunal accepted the view of the First Appellate Authority by relying upon ***Bharat Earth Movers v. Commissioner of Income Tax, (2000) 245 ITR 428***.

7. We are of the view that the Assessing Officer was under an obligation to give reasons for adding back the amount made for provision of gratuity and for leave encashment. The principles of natural justice require that in situations of this nature, there must be a reasoned order given by the Assessing Officer. In the absence of any reasoned order, the appellate authorities, including this Court exercising jurisdiction under Section 260-A of the Income Tax Act, 1961, would not have the benefit of the reasoning adopted by the statutory authorities. The appellate authorities cannot supply reasons which are themselves non-existent, as has been done by the Commissioner of Income Tax (Appeals) as well as by the Tribunal.

This is destructive of the requirement of a reasoned order which may be tested in a higher forum.

8. Under the circumstances, we have no option but to set aside the order passed by the Tribunal and to answer the question in the negative, in favour of the Revenue and against the Assessee.

9. We remand the matter back to the Assessing Officer with the direction that he should passed a reasoned order, after considering the actuarial valuation that may be produced by the Assessee and after considering whether it is necessary or not to add back the provision for gratuity and for leave encashment and whether these liabilities are ascertained liabilities or unascertained liabilities.

10. We make it clear that reasons must always be given by the Assessing Officer if a decision is taken against the Assessee failing which it is quite likely that the conclusion arrived at by the Assessing Officer may be set aside merely on the ground of lacking in any reasons.

11. The appeal is disposed of accordingly.

MADAN B. LOKUR, J

APRIL 26, 2007 **V. B. GUPTA, J**

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